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SEP 11 1957
JOHN T. FEY, Clerk

No. 390

In the Supreme Court of the United States

OCTOBER TERM, 1957

RAFAEL RIVERA, PETITIONER

v.

JAMES P. MITCHELL, SECRETARY OF LABOR, AND APPEALS BOARD OF THE EMPLOYEES' COMPENSATION BUREAU

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The order of the District Court dismissing the action (R. 44) is not reported. The *per curiam* opinion of the Court of Appeals for the District of Columbia Circuit (Pet. App. 27) is reported at 244 F. 2d 783.

JURISDICTION

The judgment of the Court of Appeals was entered on May 29, 1957 (R. 48). The petition for a writ of certiorari was filed on August 20, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the District Court had jurisdiction to review the administrative determination of petitioner's claim for benefits under the Federal Employees' Compensation Act, in the face of the clear statutory prohibition of such review.

STATUTE INVOLVED

Section 42 of the Federal Employees' Compensation Act, as amended (59 Stat. 503, 504, 5 U. S. C. 793), provides in pertinent part:

> * * * The action of the Secretary [of Labor] or his designees in allowing or denying any payment under this Act shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action. * * *

STATEMENT

Petitioner brought this action seeking judgment and such other relief as the court deemed proper relating to the administrative denial of part of his claim for compensation under the Federal Employees' Compensation Act. The complaint urged that the District Court had jurisdiction over the action apparently on the basis of the Federal Employees' Compensation Act, 5 U. S. C. 751, *et seq.*, Section 10 of the Administrative Procedure Act, 5 U. S. C. 1009, and under the Fifth Amendment of the Constitution (R. 1). The District Court granted respondents' motion

to dismiss the action for lack of jurisdiction over the subject matter (R. 44).

The pertinent facts, as alleged in the complaint and underlying the two causes of action set forth therein, may be summarized briefly. Petitioner was injured as a merchant marine seaman on a ship in action with the enemy in September, 1942 (R. 1). As a consequence of the injuries sustained, he received $5,000 in war risk insurance proceeds for total disability, $577.50 for maintenance and cure, and $624.17 as wages back to home port (R. 3), all of which benefits, petitioner alleged, were paid pursuant to contract as represented by the shipping articles for the voyage (R. 2). It was alleged, in this regard, that the contract was made with the United States Lines Company, as owner of petitioner's ship, although admittedly serving as agent of the United States in its operation (R. 2), and that these benefits were paid by the United States Lines Company as wages (R. 3).

After receipt of these payments, petitioner on May 2, 1946, filed a claim with the Bureau of Employees' Compensation for benefits under the Federal Employees' Compensation Act based on the same injuries incurred as a seaman-employee of the United States (R. 3). In his complaint in the District Court, he alleged that, in granting him compensation benefits, the Appeals Board of the Bureau of Employees' Compensation deducted as a set-off the amounts previously paid petitioner for these injuries.[1] Petitioner

[1] In another part of the complaint, it was made clear that the Appeals Board merely affirmed the initial action of the Bureau (R. 3–4) so that petitioner's many references to the deduction made by the Appeals Board should be understood to mean only action by the Board in its appellate capacity.

claimed such action was illegal, beyond the scope of the Board's statutory power, and violated his property rights without due process of law (R. 4).

As a second cause of action, petitioner alleged that the Appeals Board went outside its statutory authority in affirming payments for subsistence and quarters prior to the date of injury at $1.20 per day, a figure allegedly obtained from some undisclosed source (R. 6). Asserting that the actual value was between $2.50 and $5.00 per day, petitioner claimed that, by allowing only $1.20 per day, the Board in effect refused to appraise the value of these items (R. 5–6).

On July 19, 1956, the Government moved to dismiss petitioner's complaint on the grounds that the District Court lacked jurisdiction over the subject matter and that the complaint failed to state a claim upon which relief could be granted (R. 8). The District Court dismissed the complaint for lack of jurisdiction over the subject matter (R. 44). The Court of Appeals affirmed, *per curiam,* ruling that the District Court correctly dismissed the action in view of the statutory bar against review, as provided in Section 42 of the Federal Employees' Compensation Act, *supra,* p. 2 (Pet. App. 27).

ARGUMENT

1. The decision of the court below was clearly correct in view of the comprehensive prohibition against judicial review contained in Section 42 of the Federal Employees' Compensation Act, *supra,* p. 2. That section provides that an administrative award of

benefits under the Act "shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise * * *". Even before this prohibition was added by amendment in 1945, the Court had ruled that the basic nature of the Federal Employees' Compensation Act was inconsistent with the availability of a judicial remedy to challenge the administrative decision on a claim. In *Dahn* v. *Davis*, 258 U. S. 421, the Court observed (at 431):

> The act does not contemplate or provide for suits against the Government. On the contrary, it is essentially an act of justice or of grace on the part of the United States, elaborated and carefully worked out, and designed to compensate, promptly, without litigation or expense, all employees injured while in discharge of duty, in an amount, which, on the average, was thought adequate and just. * * *.

Moreover, the courts of appeals have consistently held that, in accordance with its clear meaning and purpose, Section 42 bars judicial review of an administrative award under the Federal Employees' Compensation Act. *Calderon* v. *Tobin*, 187 F. 2d 514 (C. A. D. C.), certiorari denied, 341 U. S. 935; *Blanc* v. *United States*, 244 F. 2d 708 (C. A. 2), pending on petition for writ of certiorari, No. 166 Misc., this Term; *Hancock* v. *Mitchell*, 231 F. 2d 652 (C. A. 3); *Nolen* v. *United States*, 109 F. Supp. 391 (C. Cls.). As the District of Columbia Court of Appeals stated in the *Calderon* case (187 F. 2d at 516):

> The federal employees' compensation allowances are grants by the Congress, and the agents of the Congress have power to determine the recipients of such grants. If Congress chose to preclude judicial review of the selection of the objects of its bounty, it could do so.

Consequently, in addition to the traditional principles of sovereign immunity preventing actions against the Government without its express statutory consent, the instant suit is barred by the nature and the explicit language of the Act under which the benefits are claimed.

Nor is it extraordinary that an administrative decision relating to a claim against the Government is non-reviewable. There is no longer any doubt that when the United States "creates rights in individuals against itself, [it] is under no obligation to provide a remedy through the courts." *United States* v. *Babcock*, 250 U. S. 328, 331. A remedy may be withheld or limited to administrative procedures. *Lynch* v. *United States*, 292 U. S. 571, 581–2; *Dismuke* v. *United States*, 297 U. S. 167, 171–2; *Tutun* v. *United States*, 270 U. S. 568, 576. A long line of decisions has established that in certain areas of veterans' benefits the plain terms of the applicable statutes,[2] which are substantially identical to Section 42, deprive the courts of jurisdiction to review the administrative ruling, and limit the claimant to his administrative remedies.[3]

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[2] 38 U. S. C. 705; 38 U. S. C. 11a–2.

[3] See, *e. g. Di Silvestro* v. *United States Veterans' Administration*, 132 F. Supp. 692 (E. D. N. Y.), affirmed, 228 F. 2d

2. Petitioner's attempt to challenge the constitutionality of the Board's action as depriving him of property rights without due process of law does not advance his case. He has admittedly received the entire proceedings of the war risk insurance, maintenance and cure, and wages to home port to which he was entitled. The only administrative action which he attacks as unconstitutional was the appraisal—which the Bureau regarded as pertinent and necessary and which petitioner claims was improper—of the impact of other pertinent statutes on the determination of his compensation benefits under the Compensation Act. Even if the Bureau was erroneous in its interpretation of the interrelationship of the various legislative provisions, its decision in this regard presents solely a question of law under the Act. Judicial review of such a decision, the sole effect of which is to reduce the amount of the compensation award, is explicitly barred by Section 42 of the Act. As noted by this Court in *Lynch* v. *United States*, 292 U. S. 571, with reference to the substantially identical language of 38 U. S. C. 705 barring review of administrative decisions on veterans' benefit claims, the apparent purpose of such a provision was to deny judicial review in all cases, even where the decision is totally

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516 (C. A. 2), certiorari denied, 350 U. S. 1009; *Cook* v. *Higley*, 238 F. 2d 41 (C. A. D. C.); *Magnus* v. *United States*, 234 F. 2d 673 (C. A. 7); *Brasier* v. *United States*, 223 F. 2d 762 (C. A. 8), certiorari denied, 350 U. S. 913; *Cyrus* v. *United States*, 226 F. 2d 416 (C. A. 1); *United States* v. *Houston*, 216 F. 2d 440 (C. A. 6); *Acker* v. *United States*, 226 F. 2d 575 (C. A. 5), certiorari denied, 350 U. S. 1008.

dependent upon a question of law, wholly unsupported by the evidence, or clearly arbitrary or capricious. 292 U. S. at 587. See also *Hahn* v. *Gray*, 203 F. 2d 625 (C. A. D. C.).[4]

3. Similarly unavailing is petitioner's attempt to skirt the jurisdictional bar by a strained and illogical interpretation of the scope of the provision precluding review, as it appears in Section 4 of the Amendatory Act of 1945, 59 Stat. 503, 504. It is true that in the Statutes at Large for 1945 the bar against review is phrased in terms of "payment under this Act" rather than "payment under sections 751–756, 757–791 and 793 of this title", the language appearing in 5 U. S. C. 793. However, it is clear that there is no inconsistency in scope or meaning, and that, as usual, the codifiers make no more than the changes in phraseology necessary to integrate the Act into the Code. The reference to "this Act" in 1945 meant the entire Compensation Act, and not merely the 1945 amendments. For the drafters of Section 4 of the Amendatory Act of 1945 provided that this section should be added as a last paragraph to Section 42 of the Federal Employees' Compensation Act of 1916. In incorporating the

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[4] Even where constitutional objections to agency action other than an attack on erroneous conclusions of law have been raised, it has been held that the clear language of the statutory prohibition of Section 42 forecloses review. See, *e. g.*, *Hancock* v. *Mitchell*, 231 F. 2d 652 (C. A. 3) (review barred in claim for Federal Employees' Compensation benefits despite attack on adequacy of hearing).

phrase "this Act" in the amendment to Section 42, they could only have had reference to the Act of which Section 42 was a part, *i. e.*, the Federal Employees' Compensation Act of 1916, as amended.

Moreover, in the several instances in which the term "this Act" appears in Section 4 of the Amendatory Act of 1945, the references clearly are to the original Act of 1916, as amended, and are not restricted to 1945 amendments. The most notable example is found in the authorization to make lump-sum awards "in the manner prescribed by section 14 of this Act". Since Section 14 does not appear in the 1945 amendments but was enacted as part of the original Act of 1916, "this Act", as so used, can refer only to the 1916 Act.

4. Finally, petitioner's reliance on the judicial review provisions of the Administrative Procedure Act, Section 10, 60 Stat. 243, 5 U. S. C. 1009, is equally unfounded. In addition to the general recognition that Section 10 has not extended the jurisdiction of the courts (see, *e. g., Kansas City Power & Light Co.* v. *McKay,* 225 F. 2d 924 (C. A. D. C.), certiorari denied, 350 U. S. 884), it is of crucial significance that Section 10, by its express terms, does not apply in situations where, as here, the governing statute precludes judicial review. *Ford* v. *United States,* 230 F. 2d 533 (C. A. 5); *Cyrus* v. *United States,* 226 F. 2d 416 (C. A. 1).

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957